This document summarizes changes in *Policy 301 Informed Consent* (referred to as Policy 301 in this document) that NIH investigators should be aware of, from the SOP mentioned below. Changes in this policy are largely regulatory, and mostly address the new consent requirements under the 2018 Common Rule, incorporate consent requirements for exempt research and multi-site research, and when the reviewing IRB is an external IRB.

The policy describes investigator requirements regarding informed consent including in protocols and informed consent documents, and when obtaining and documenting informed consent, in non-exempt and certain exempt human subjects research. It also describes the requirements for the NIH IRB when reviewing and approving the informed consent document and process, and when considering waivers or alterations of consent, including waivers of documentation of consent.

This policy does not address, or apply to, the use of broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens, as described in the 2018 Common Rule at 45 CFR 46.116(d).

Investigators are responsible for reviewing Policy 301 and complying with the requirements of the policy.

Note: Text from the policy and other policy titles are italicized.

Policy 301 Informed Consent	**SOP Superseded by Policy:**
Policy 301 supersedes	**SOP 12 Informed Consent** When inactivated, this SOP will be archived in the Policy Archive.
Applicability of Policy 301 - This policy applies to: • NIH investigators, whether the Reviewing IRB is the NIH IRB or an external IRB • Non-NIH investigators when the NIH IRB is the Reviewing IRB. • NIH IRB, when it is the Reviewing IRB.	
Policy Requirement	**SOP Requirement**
Section C.1.a. – *Principal Investigators (PIs) will ensure that all requirements for informed consent are met, in accordance with federal law, regulation, and policy, including NIH policy. (45 CFR 46, and 21 CFR parts 50 and 56, as applicable)* *a. Research initially approved by the IRB, or for which IRB review was waived or determined to be exempt, prior to January 21, 2019, is subject to the requirements of the pre-2018 Common Rule (45 CFR 46);* b. *Research initially approved by the IRB, or for which IRB review was waived or determined to be exempt on or after January 21, 2019, or which was originally subject to the pre-2018 Common Rule and transitioned to the 2018 Common Rule, is subject to the requirements of the 2018 Common Rule (45 CFR 46). For the purposes of informed consent*	**SOP 12** – NA

(oral or written), see specifically 45 CFR 46.116, 46.117 and applicable Subparts of 45 CFR 46 (i.e., B and D). (See also E.2.a. I and II.) Consent requirements must be consistent with the version of the Common Rule (45 CFR 46) under which the protocol was originally approved, or transitioned to, by the IRB.	
Section C.2. – *Investigators will not enroll or involve a subject in any research activities, until legally effective informed consent has been obtained, except when the IRB has approved a waiver or alteration of informed consent or waiver or alternation of documentation of informed consent.* This regulatory requirement has not changed. (See also *Policy 402 Research Involving Children* and *Policy 403 Research Involving Adults Who Lack Decision-making Capacity to Consent to Research Participation*, as applicable.)	**SOP 12.2.** – *Except as provided elsewhere in this SOP … no investigator may involve a human as a subject in research covered by this policy unless the investigator has obtained the subject's legally effective informed consent.*
Section C.4. – *When the NIH IRB is the Reviewing IRB, and the research is taking place at an NIH site, the NIH PI will only use NIH consent document templates, for review and approval by the NIH IRB.* This clarification stresses that only NIH consent templates may be used at an NIH site, including when there is an external sponsor. (The consent templates should be downloaded from the IRBO website, not from the OPS website.)	**SOP 12.7.1.E.** – SOP 12 stated that the NIH consent template be used at the CC. Policy 301 expands the requirement for NIH template use to all NIH sites.
Section C.5. – *All research taking place at an NIH site, **regardless of the reviewing IRB,*** (emphasis added) *must include the NIH required institutional language in the consent.* *a. When relying on an external Reviewing IRB and using a non-NIH consent, the NIH PI must use NIH required institutional language as approved by the Office of IRB Operations (IRBO) during its administrative review. (See Policy 105 IRB Reliance and Collaborative Research.)*	**SOP 12.7.1.F.** – SOP 12 required that any changes to "NIH boilerplate" language (now referred to as "NIH required institutional language") must be cleared by the NIH IRB and approved by the NIH Office of General Counsel.

b. Changes to the NIH required institutional language are not permitted unless first approved by OHSRP. (See also E.2.C. I and II.) **Section E.2.c.:** *i. When the Reviewing IRB is an external IRB, the NIH PI must work with IRBO to ensure that NIH required institutional language and applicable local context information is inserted into the consent document, and any inapplicable information is removed (e.g., that which is contrary to applicable law or NIH policy). (See Policy 105 IRB Reliance and Collaborative Research for more information.)* *ii. Include any additional information required by the NIH IRB (in addition to the requirements at 45 CFR 46.116) to be given to subjects, when in the IRB's judgement, the information would meaningfully add to the protection of the rights and welfare of subjects. (45 CFR 46.109(b))* The requirement to use NIH Required institutional language and templates has been expanded to include all NIH sites, not just the CC. This policy also addresses how this is managed when an external IRB is the Reviewing IRB.	
Section C.6. – *When conducting remote informed consent using video, only NIH-approved platforms may be used (see E.3.a.V. below for more information about remote consent). (For research conducted at the NIH Clinical Center (CC) other policies may also apply, for more information see the Medical Administrative Series Policies.)* **E.3.a.V.** – *When seeking to use a remote consent procedure (i.e., telephone or video conference), describe this procedure and justify its use in the protocol.* *i. Note for NIH PIs: When conducting remote informed consent using synchronous audio/video, only NIH-approved platforms may be used consistent with C.6.above.* *ii. When informed consent has been obtained using a remote consent procedure, no research procedures may be initiated until the investigator has verified that the subject has*	**SOP 12.15.** – This section of the SOP addressed telephone consent but did not address use of video or other remote consent processes.

returned a signed and dated the informed consent document, unless the IRB has granted a waiver of documentation of consent. An exception to this is when an IRB has approved the information and/or sample (e.g., a survey, blood collection or buccal swab sample) to be collected remotely and returned along with the informed consent document. In this case, however, no use or analysis of the information or sample may begin unless a fully executed informed consent document has been received and verified by an investigator. *Policy 301* expands requirements beyond telephone consent to address remote consent processes. *Policy 301* also reminds investigators that the signed and dated informed consent must be received by the investigator before any research procedures, use or analyses of information or specimens, may begin. *Policy 301* reminds investigators conducting research at the CC to review the applicable MAS policies to determine permissible video or remote platforms.	
Section C.8. - *When the research is regulated by the FDA, and a subject is withdrawn from the research, the investigator cannot continue to access the subject's medical record or other confidential records (e.g., other protocol research records) for additional research purposes unless the subject has provided consent for this purpose. (See E.2.e.I.viii. below, 21 CFR 312.62(b) and 812.140(a)(3), and see Policy 500 Research Involving Drugs, Biological, and Nutritional Products.* AND **Section E.2.e.I.viii.**. – *Include information about data retention in the event of a subject's withdrawal from the research. Explain that the subject's data collected to the point of withdrawal remains part of the study database and will not be removed. Further, the investigator may not continue to access the subject's medical record or other*	**SOP 12.9.3.** – Referred the reader to SOP 15 to learn more the need for obtaining additional informed consent if the subject is willing to engage in continued limited study participation and such a situation was not described in the original informed consent form.

confidential records consistent with C.8. above. • *If the subject is withdrawn from the primary study intervention, but will remain on the study in a more limited manner (e.g., for safety or long-term follow-up), and the original consent does not describe this limited participation, the investigator must obtain consent for this limited participation. Further, this consent should distinguish clinical outcomes from research procedures and must be approved by the IRB. (See Guidance for Sponsors, Clinical Investigators, and IRBs Data Retention When Subjects Withdraw from FDA-Regulated Clinical Trials.); or* • *If the subject declines to participate in further follow-up or to provide clinical outcome information, note that the researcher may continue to use the subject's data in the research database collected prior to the subject's withdrawal consistent with the informed consent document.* *Policy 301* includes the FDA records retention requirements and expectations for continued use of subject information in the case of early withdrawal. SOP 15 addressed withdrawal from FDA-regulated research. *Policy 300* goes into more detail on this topic.	
Section C.9. – *For clinical trials as defined by, and subject to, the 2018 Common Rule, if the NIH is the only site, or in the case of multi-center research when NIH is the lead site, then the NIH PI, or the PI's Institute or Center (IC), must post one blank copy of an IRB-approved informed consent document used to enroll subjects in the research, on a publicly available federal website that is established as a repository for such informed consent documents (e.g., ClinicalTrials.gov or Regulations.gov). The document must be posted after the trial is closed to recruitment, and no later than 60 days after the last study visit by any subject, as required by the protocol. (45 CFR 46.116(h) of the 2018 Common Rule.*	**SOP 12** – NA

Policy 301 includes the new 2018 Common Rule requirement to post one blank IRB-approved informed consent document used to enroll subjects, for each clinical trial defined by, and subject to, the 2018 Common Rule (45 CFR 46).	
Section C.10. – *For human subjects research determined to be exempt under 45 CFR 46.101(b) (pre-2018 Common Rule) or 45 CFR 46.104 (2018 Common Rule), IRBO may require that the PI share certain consent information with the subject prior to beginning the research, see E.1. below.* AND **Section E.1.a.** – *NIH investigators who seek an exempt determination from the IRBO for research involving prospective collection of information from human subjects[1] (e.g., educational, survey, or benign behavioral research, that is exempt), must comply with the following:* *I. The plan for how consent information will be conveyed to subjects must be included in the protocol.* *II. The consent information (or documents, if any) must be submitted in the electronic IRB system for review by the IRB.* *III. The consent information that is conveyed to subjects must include the following elements:* *i. The purpose of the research;* *ii. That the activity is being conducted for research purposes;* *iii. That participation is voluntary;* *iv. A description of the procedures involved (e.g., approximate time commitment, type of research procedures, type and number of questions being asked); and* *v. The name and contact information for one of the investigators.*	**SOP 12** – NA SOP 12 did not address consent requirements for exempt research.

[1] Exemptions related to broad consent for the maintenance, storage and secondary use of identifiable private information or identifiable biospecimens at 45 CFR 46.104(d)(7) or (8) of the 2018 Common Rule are not being implemented in the NIH IRP at this time. Some research including vulnerable populations may not use/are not permitted to use exemptions.

IV. If relevant to the research, the investigator must also address the following topics in the consent information: *i. A description of the subject population (e.g., number of subjects anticipated to be accrued, eligibility criteria);* *ii. Any anticipated risks or benefits;* *iii. When withdrawing from the study, whether the subject's data will be maintained after withdrawal;* *iv. Whether identifiable private information will be collected or not. If identifiable private information will be collected, how privacy and confidentiality will be maintained; and* *v. Compensation (including when none is offered).* *b. Before involving a subject in the research, consent information must be provided to the subject. However, the consent information need not contain all the elements of informed consent as described in 45 CFR 46.116, nor be documented using a written, signed consent as described in 45 CFR 46.117. The consent information may be conveyed to the subject, verbally, in writing, or electronically, as approved by the IRBO.* c. *Under the 2018 Common Rule, for exempt research involving benign behavioral interventions, if subjects will be deceived regarding the nature or purposes of the research, they must be informed that they will be unaware of, or misled, regarding the nature or purposes of the research, and subjects must authorize the deception through prospective agreement to participate in the research.* ***Policy 301*** addresses consent requirements for exempt research that involves prospective collection of private information as defined under the Common Rule (45 CFR 46).	
Section E.2.c. – *For research approved under the 2018 Common Rule, the following non-exhaustive list of the 2018 regulatory requirements for informed consent are required:*	**SOP 12 –** NA

I. The subject must be provided with information that a reasonable person would want to know in order to make an informed decision about whether to participate in the research. (For more information see Common Rule Bulletin #4: The "Reasonable Person Standard in ICF.) *II. Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a subject in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension. (45 CFR 46.116(a)(5)(i) of the 2018 Common Rule and see Common Rule Bulletin #1: Key Information for more information.);* *III. Informed consent as a whole must present information in sufficient detail about the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the subject's understanding of the reasons why one might or might not want to participate in the research. (45 CFR 46.116(a)(5)(ii) of the 2018 Common Rule and see Common Rule Bulletin #1: Key Information for more information.);* *IV. For research that involves the collection of identifiable private information or identifiable biospecimens, the informed consent must include a statement whether or not identifiers might be removed and the data or biospecimens shared without additional informed consent, as required by 45 CFR 46.116(b)(9) of the 2018 Common Rule and see Common Rule Bulletin #3: Biospecimens/Data Requirements in ICF for more information.);* *V. When appropriate, the informed consent must include information relating to the use of biospecimens leading to commercial profit, return of clinically relevant results, and performance of whole genome sequencing, as specified in 45 CFR 46.116(c)(7-9) of the 2018 Common Rule. (See Common Rule Bulletin #3:*	

Biospecimens/Data Requirements in ICF for more information.); and *VI. At least one blank copy of an IRB-approved consent must be posted on a federal website established for this purpose. See C.9. above and see Common Rule Bulletin #5: Posting of ICFs for more information.* Policy 301 explains the new 2018 Common Rule consent requirements. See also the Common Rule Bulletins located at the bottom of the Policy Page on the IRBO website. For more information on 2018 Common Rule requirements for informed consent, see the trainings slides in the Presentation Archive on the IRBO website.	
Section E.2.e. – This section is largely unchanged from SOP 12. New or changed requirements are shown below: E.2.e.I. *When obtaining informed consent from subjects, informed consent must:* *I. Be sought only under circumstances that provide the subject sufficient opportunity to read the consent, discuss it, and consider whether or not to participate. The subject must have the opportunity to discuss that information with a knowledgeable investigator. (See 45 CFR 46.117(b).)* *i. Whenever possible, be given to the subject in advance of the consent discussion, so that the subject will have sufficient opportunity to consider the information about the research and discuss it (e.g., with their primary care provider or family members).* *VI. Be signed and dated by the subject, except when the IRB has approved a waiver of documentation of consent.* *i. Be signed by the subject either in writing or electronically. However, when obtaining electronic signature, NIH investigators are reminded that methods for obtaining electronic signature must comply with any NIH- or IC-specific and IRBO requirements. In addition, obtaining electronic signature must be prospectively reviewed and approved by the IRB.*	**Section 12.8. –** Discussed the informed consent process.

• *For FDA regulated research, any electronic signature must be compliant with the requirements of 21 CFR part 11.* VII. For NIH investigators, be documented in the subject's record, describing the method used for communication with the subject and the specific means by which the subject communicated agreement to participate in the study (e.g., their verbal response and signing of the informed consent document). (For research conducted at the NIH Clinical Center, see *M77-2 Informed Consent* for more information about documentation of informed consent in the medical record Policy 301 stresses that whenever possible subjects should be provided the informed consent document in advance of the informed consent discussion. This may be accomplished by emailing or mailing the informed consent document to the subject, using NIH approved methods. Documentation of consent includes the required signatures, comments in the subject's record about any special circumstances related to the consent process and retention of the signed/dated consent per NIH policy, regulation and GCP best practices. Policy 301 reminds investigators to document the method of communication with the subject and any special circumstances related to the consent process in the subject's record.	
Section E.2.f. – *Informed Consent for FDA-regulated Research* *I. Consent must be obtained from each human subject to whom the test article is administered consistent with 21 CFR part 50 Subparts B and D, except as provided in 21 CFR 50.23 or 21 CFR 50.24.* *II. In addition to other applicable requirements, informed consent for FDA-regulated research must, as appropriate:* *i. Comply with the requirements described in 21 CFR 50 Subpart B.*	**SOP 12.5., 12.12. and 12.13.** – These sections addressed informed consent for FDA regulated research and exceptions from informed consent for emergency research respectively. SOPs 15 and 15A also covered informed consent requirements for FDA regulated research.

ii. Comply with requirements described in 21 CFR 50 Subpart D, when the research involves children. *iv. Include a description of procedures that are experimental.* *v. Include a statement to identify the test article as "investigational" or "not approved by the FDA," if the test article under study is not FDA approved for the proposed use. If the test article is approved, include statement as to whether it is being used according to its labeled indications. (21 CFR 50.25(a)(1))* *vi. Make no claims which state or imply, directly or indirectly, that the test article is safe or effective for the purpose(s) under investigation or that the product is in any way equivalent or superior to another product. (See 21 CFR 312.7(a), 21 CFR 812.7(d), and Guidance for Institutional Review Boards and Clinical Investigators-Recruiting Study Subjects)* *vii. Include information about data retention in the event of a subject's withdrawal from the research. Explain that the subject's data collected to the point of withdrawal remains part of the study database and will not be removed.* • *If the subject is withdrawn from the primary study intervention, but will remain on the study in a more limited manner (e.g., for safety or long-term follow-up), and the original consent does not describe this limited participation, the investigator must obtain consent for this limited participation. Further, this consent should distinguish clinical outcomes from research procedures and must be approved by the IRB. (See Guidance for Sponsors, Clinical Investigators, and IRBs Data Retention When Subjects Withdraw from FDA-Regulated Clinical Trials.); or* • *If the subject declines to participate in further follow-up or to provide clinical outcome information, note that the researcher may continue to use the subject's data in the research database*	

collected prior to the subject's withdrawal consistent with the informed consent document. These regulatory and policy requirements have not changed. Note that consent requirements for FDA regulated research are covered under Policy 301 and not under the Policy series 500 for FDA regulated research.	
Section E.2.g. – *Consent requirements relating to ClinicalTrials.gov* *I. For NIH IRP trials within the scope of the NIH Policy on the Dissemination of NIH-Funded Clinical Trial Information, informed consent documents for clinical trials are to include a specific statement relating to posting of clinical trial information.* *i. Note that the definition of "clinical trial" under the NIH Policy on the Dissemination of NIH-Funded Clinical Trial Information is "a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of those interventions on health-related biomedical or behavioral outcomes" and is broader than the statutory definition of an "applicable clinical trial."* *ii. NIH PIs must include the statement found at E.2.f.II. in clinical trial (as defined in E.2.f.I.i.above) informed consent documents as required by the NIH Policy on the Dissemination of NIH-Funded Clinical Trial Information.* *II. For "applicable clinical trials," as defined by statute at 42 U.S.C. 282(j)(1)(A), when seeking informed consent, include the following statement, word-for-word, regarding study registration and information submission to the registry databank at ClinicalTrials.gov: "A description of this clinical trial will be available on http://www.ClinicalTrials.gov, as required by U.S. law. This Web site will not include information that can identify you. At most, the Web site will include a summary of*	**SOP 12** – NA

the results. You can search this Web site at any time." (21 CFR 50.25(c)) These requirements were not clarified in SOP 12.	
Section E.2.h. – The obligations regarding informed consent for non-English speaking subjects are largely unchanged from SOP 12. Due to the length of this section, we highlight only changed or new requirements below: *I. When non-English speaking subjects are anticipated to enroll in the research:* *i. The PI must submit a certified translated long form consent document in the language of the anticipated subjects to the IRB for approval.* *ii. IRB approval of the certified translation must be obtained before the translated long form consent document is used.* *II. When the NIH IRB is the reviewing IRB, the PI must report short-form consent use to the IRB at time of continuing review.* *III. When a non-English speaking subject seeks to enroll unexpectedly and there is no IRB-approved long form consent document in the language of the subject:* *i. If there is no IRB-approved short form consent document in the language of the subject, the NIH PI must submit to the IRB (before use), a certified translation of the short form consent in the language of the subject that meets the requirements of 45 CFR 46.116 and 46.117(b)(2), for approval by the IRB.* **Section E.2.h.V**. – *When obtaining short form consent (or when the subject requires an interpreter for long form consent discussions) a professional interpreter, who is in-person, should be used or, alternatively, a professional translation can be conducted via a phone translation service or other methods permitted by the institution.* *i. Use of an adult family member for interpretation is not permitted unless a professional medical translator cannot be located. The research record must document*	**Section 12.9.1.** – The requirements for consent of non-English Speaking subjects were addressed in this section. Below are several items from SOP 12 which have changed with Policy 301: *Section 12.9.1. – To assure the consent form translation is accurate; the IRB may require a certified translation of the consent language without additional backtranslation. If no certified translation is available, a non-certified translation may be used, and an independent back-translation must also be obtained.* *Section 12.9.1.C. - It is preferable that someone who is independent of the subject (e.g., not a close family member, significant other, partner, etc.) be the interpreter.*

the reasons for using a family member and the attempts made to locate a professional translator. **Section E.2.g.VI. –** *For research approved under the 2018 Common Rule requirements, when obtaining short form consent, the key information must be presented first to the subject, before other information, if any, is provided.* **Section E.2.g.VII.ii. –** *Either the interpreter or a second individual (fluent in both languages) can serve as the witness.* *iii. The witness must be fluent in the language of the subject and in English.* • *In the vary rare instance that the translator is unable to act as the witness, and if the witness is not fluent in both the language of the subject and English, then the witness should verify with the interpreter that the subject understands the information presented, that all questions have been satisfactorily addressed, and that the subject agrees to participate. The witness, or investigator obtaining informed consent, should document this as a note in the record documenting the short form consent process.* *XI. The consent process must be documented in the subject's record consistent with the policy of the institution* The NIH IRB no longer accepts back-translations. Note the restrictions on using family members as interpreters at E.2.V.i. above. There is another change: when investigators follow the requirements of this section, pre-approval to use an existing IRB-approved short-form consent (and using the study-specific long form as the basis of translation) is no longer required, but must be reported at time of continuing review. Investigators should pay attention to the key information requirement for research approved	

under the 2018 Common Rule, when conducting short-form consent. This entire section of the policy should be read prior to obtaining short-form consent if there are any questions about requirements. The FAQs on the IRBO website are also helpful.	
Section E3 – Specifies responsibilities of NIH PIs relating to informed consent. We highlight only new or changed requirements here. **Section E.3.a.V.** – *When seeking to use a remote consent process (i.e., telephone or video conference), describe this process and justify its use in the protocol.* **Section E.3.a.VII.** – When research involves deception, the protocol must include a description of, and rationale for, such procedures. *The protocol must provide a description of the process to debrief subjects (e.g., when subjects will be debriefed, by whom and how subjects will be debriefed). In addition, the requirements in 45 CFR 46.116 for waiver or alteration of informed consent must be fulfilled.* *i. At the conclusion of the research subject's participation, as part of the debrief, the investigator must inform the subject about the deception; and* *ii. The subject must be provided with the opportunity to withdraw their data from the research endpoint analysis.* **Section E.3.a.XI. –** *When the NIH IRB is the Reviewing IRB, for NIH research that is taking place at an NIH site, the NIH PI will only use the NIH IRB-approved consent templates consistent with E.2.b. above.* **Section E.3.a.XII.** – *Must comply with the requirements consistent with E.2.b.III. above, when using an external Reviewing IRB.* **Section 3.a.XIV. –** *Ensure that investigators delegated to obtain informed consent are qualified to obtain informed consent (e.g., based on familiarity with the protocol, research, clinical experience, and qualifications) and have completed appropriate training per Policy 103 Education*	**SOP 12.6 Responsibilities of the Principal Investigator** – These requirements are generally the same, except that SOP 12 did not address deception, remote consent by video, or 2018 Common Rule requirements. Nor did SOP 12 address limitations on consent processes for trainees.

Program and other NIH requirements as applicable. *i. Trainees who are not Federal employees (e.g., IRTAs, CRTAs, VFs) and Special Volunteers may observe or participate in the consent process as appropriate, but they must be under direct and constant supervision by a qualified NIH employee investigator who must sign the informed consent document. (See Policy 300 Investigator Responsibilities.)* • *The exception is that GMEC Trainees employed by other institutions and on rotation to NIH through their clinical fellowship program may obtain consent. Note that NIH GMEC Trainees are Federal employees.* *iii. Those designated to obtain informed consent must be identified in the approved IRB application prior to initiating the informed consent process.* **Section E.3.a.XV.** – *For research subject to the 2018 Common Rule, ensure that one blank copy of an IRB-approved informed consent document used to enroll subjects, is posted on a publicly available federal website for this purpose (ClinicalTrials.gov or Regulations.gov) consistent with C.9. above.* For clinical trials defined by, and subject to, the 2018 Common Rule, the NIH PI and the PI's IC is responsible for ensuring one copy of a blank informed consent form is posted to a publicly available federal website.	